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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 346

HARRY B. HELMSLEY,
Petitioner,
v.
CITY OF DETROIT and CHARLES N. WILLIAMS;
and
COUNTY OF WAYNE and LOUIS H. FUNK,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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WO. 2-8745—WO. 2-8732

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IN THE

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Harry B. Helmsley, your Petitioner, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit was entered on June 29, 1967, and is not officially reported. The majority opinion is set forth in Appendix A, *infra*, p. 17. The dissenting opinion is set forth in Appendix A, *infra*, p. 25. The Findings of Fact and Conclusions of Law constituting the opinion of the United States District Court for the Eastern District of Michigan, Southern Division are not officially reported and are set forth in the Appendix for Appellant filed in the United States Court of Appeals (327a-343a).*

JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on June 29, 1967 (Appendix A, *infra*, p. 28). The jurisdiction of this Court is invoked under 28 U.S. Code 1254(1).

QUESTION PRESENTED

The Michigan constitution provides that the assessment of all real and personal property for ad valorem taxes shall be uniform and at cash value. The statute defines cash value as the price which could be obtained for property at private sale and not at forced or auction sale, i.e., market value. Assessment of Detroit, Michigan, properties, generally, is at the level of not more than 50% of market value.

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* Figure with letter "a" denotes page of said Appendix for Appellant.

The question is whether assessment for ad valorem taxation of a parcel of real property in Detroit, during 4 successive years, in amount many times greater than its market value, is valid under Michigan law, as well as not in violation of the equal protection clause of the Fourteenth Amendment.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The following constitutional provisions and statute are set forth in Appendix B, *infra*, p. 29: Section 1 of the Fourteenth Amendment of the Constitution of the United States; Article X, Sections 3 and 7 of the Michigan Constitution of 1908; Section 211.27, Compiled Laws of Michigan of 1948, M.S.A. Section 7.27.

STATEMENT OF THE CASE

Petitioner, a citizen and resident of New York, seeks review of four consolidated suits brought in the United States District Court for recovery of ad valorem taxes paid under protest to Defendant Michigan municipalities by reason of assessments imposed against his parcel of real property in Detroit for the years 1960 through 1963.[1] Judgment by the District Court of no cause for action (344a) was affirmed by the Court of Appeals (App. A, p. 24), Judge Neese dissenting (App. A, p. 25).

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[1] A detailed stipulation (251a-297a) covers the material facts of the case. The amount paid by Petitioner is $685,868.34. Recovery would be subject to reassessment by the assessing officials. *Helin v. Grosse Pointe Tp., infra.*

The basis for jurisdiction of the District Court is diversity of citizenship, with the requisite jurisdictional amount involved, and the existence of a federal question under the Fourteenth Amendment.

The property in question was built many years ago as a manufacturing plant.[2] It is no longer suitable for that purpose, and no investor would attempt to reproduce it. Manufacturing operations were discontinued in 1954, from which time on the former owner attempted to sell the property. Finally, in 1960, the property was sold to Petitioner on the open market, in an arms-length transaction, for $500,000. The property, not useful for any other purpose, is presently divided into various tenancies under professional management. Despite the stipulated fact that strenuous efforts were made to promote occupancy, there was never more than 40 per cent occupancy during the four-year period (253a). The District Court found that the expenses of operating the property exceeded income by over $1,000,000 during that period (329a-330a). More than 45 cents of every aggregate dollar of gross income has been taken by property taxes in that time.

Furthermore, it is undisputed that for each of the four years in question, the price that could have been obtained for the property at private sale would have been but a small fraction of the assessment. The market value ranges from the low estimate of $250,000—$500,000 for four years, to the maximum estimate of $600,000 for 1962 and $750,000 for 1963.

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[2] The property consists of a number of buildings of heavy construction without clear span space, built at various times commencing in 1910, aggregating about 2,000,000 square feet of floor space, superimposed on land area of only 755,400 square feet; mostly built in 1922 and earlier, the remainder in 1929, except one building containing 7,845 square feet built in 1945.

For many years the general level of assessment of real property in the City of Detroit has been at the "rate of approximately fifty per cent of estimated sales or cash value."[3] Nonetheless, Petitioner's property was assessed at many times its market value. In 1960 the property was assessed at $3,890,126. On appeal by Petitioner, the State Tax Commission appraised the property as having full value of $8,144,716 (314a-319a) and reduced the assessment to $3,532,350, on the basis that the Commission recognizes that the level of Detroit assessments is less than fifty per cent of full value (220a). In 1962, Petitioner once more appealed the assessment to the State Tax Commission, but this time the Commission appraised the property as having full value of $4,968,723 (320a-326a), a difference in appraised value of over three million dollars in a two-year period.[4] The assessment was accordingly reduced to $2,427,710 for 1962, which remained the figure for 1963.

The Commission's appraisal was the result of applying a formula, based on reproduction cost, with allowances for depreciation, obsolescence and rental vacancies. There is no claim that the assessments purport to be equivalent to or bear any relation to market value.

The Michigan Constitution provides that assessment of all property for ad valorem taxes shall be uniform and at cash value (App. B, p. 29), and the Michigan statute defines cash value as the price which can be obtained for the property at private sale and not at forced or auction sale.

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[3] Language of the City Controller in the letter "to All Financial Institutions" representing to the "financial community" that Detroit's economy is resurgent (291a-293a).

[4] In the period between said 1960 and 1962 Commission appraisals, the District Court found that there was demolition aggregating 11,790 square feet of floor space (328a), but that the Petitioner installed a space heating system in 1961 at the cost of $350,000, and other alterations and improvements costing $170,360 in 1961 and 1962 (330a-331a).

(App. B, p. 30). Petitioner claims that the said assessments of his property are constructively fraudulent, violate the uniformity requirement of the Michigan Constitution and result in discrimination in violation of the Fourteenth Amendment to the United States Constitution.

REASONS FOR GRANTING THE WRIT

The case at bar is particularly important because the Opinion of the Court of Appeals *expressly*, and not merely by implication, abrogates the standard for uniform assessment mandated by the Michigan constitution, the very foundation of equality in taxation. Consequent nullification of the Michigan constitutional rule of uniformity manifestly results in negation of fundamental principles by which the equal protection clause of the Fourteenth Amendment of the Constitution of the United States safeguards the rights of taxpayers and their property.

A. THE COURT OF APPEALS HAS DECIDED AN IMPORTANT STATE CONSTITUTIONAL QUESTION IN A WAY IN CONFLICT WITH THE STATE LAW

1. The Constitution of Michigan (1908) (App. B, p. 29) provides:

> "The Legislature shall provide by law a uniform rule of taxation, except on property paying specific taxes . . ." (Art. X, Sec. 3) "All assessments hereafter authorized shall be on property at its cash value." (Art. X, Sec. 7)[5]

[5] The Michigan Constitution of 1963 (effective January 1, 1964) contains a similar rule of uniformity.

Pursuant to the constitutional mandate, the Legislature defines cash value:

> "The words 'cash value' whenever used in this act, shall be held to mean the usual selling price at the place where the property to which the term is applied shall be at the time of assessment, being the price which could be obtained therefor at private sale, and not at forced or auction sale." (C.L. '48, Sec. 211.27; M.S.A., Sec. 7.27) (App. B, p. 30).

The fundamental Michigan rule is that the standard of cash value as thus defined is essential to assure equality in taxation:

> "By the mandate of the Constitution as above quoted, it is made the duty of the legislature to provide a uniform rule of taxation, and an essential element of that uniform rule is, that all assessments of property shall be at its cash value." *Hudson Motor Car Co. v. Detroit,* 282 Mich. 69, 79, 275 N.W. 770 (1937).

> "The purpose of the law in requiring all assessments to be on property at its cash value is to provide a standard for determining an equality of assessments." *Cleveland-Cliffs Iron Co. v. Republic Tp.,* 196 Mich. 189, 199, 163 N.W. 90 (1917).

2. As to the extent of the discretion and power of assessing officials, and the limits within which they are free from judicial restraints, the settled Michigan doctrine is stated in *Naph-sol Ref. Co. v. Muskegon Tp.,* 346 Mich. 16, 20, 77 N.W. 2d 255, 257:

> "Assessments of properties for purposes of taxation will not be disturbed by courts unless they are so at variance with undisputed facts as to be a fraud upon the taxpayer, notwithstanding courts might disagree with conclusions of assessing officers *in the exercise of their discretionary power* and adopt a different figure upon the same evidence. . . ." (Emphasis added)

The earlier declaratory judgment case of *Helmsley v. Detroit*, 320 F. 2d 476 (1963) (C.C.A. 6), was brought by Petitioner before payment of the taxes for determination by the Court of the proper amount of assessment. The Court of Appeals in reviewing Petitioner's objections to the assessment (p. 478) and the Michigan cases to determine whether there was a state remedy, quoted the above language from *Naph-sol*, and concluded that "the objections which the Plaintiff (Petitioner) makes to the assessment of the property in the case before us, if proven, would come within the definition of fraud as given in these cases." (p. 480)

3. However, in its present decision, the Court of Appeals now asserts the theory that the assessing officials are vested with the power to abandon the *legislative standard* for assessments, and to establish a *method* of valuation as the standard. The standard of the assessment thus becomes the product of the method.

There is complete unanimity that the assessment of Petitioner's property was many times the price Petitioner could have obtained for the property at private sale in all of the four years. Although conceding that "the terms of the statute might well be interpreted as Plaintiff urges if we were free to treat the question afresh," the Opinion of the Court of Appeals disposes of the undisputed fact that there is no relationship between the assessment in this case and the market value of Petitioner's property, by simply nullifying the constitutionally imposed standard. Thus: ". . . under the circumstances of the case the market approach would not result in the ascertainment of the true value of the property. . . . *the reproduction cost method of valuation offered a realistic standard to the assessors in arriving at an assessment value,* and that the

standard so used was not arbitrary, unreasonable or fraudulent. . . ." And, finally, "Once it is established that the State Tax Commission had the right to choose the reproduction cost method, most of plaintiff's case simply missed the mark."

Furthermore, it is beyond argument that, on this record, the general level of assessment of Detroit real property has been deliberately maintained at merely 50 percent of market value for many years.[6] Having abrogated the legislative standard for assessment, and having sanctioned adoption by the administrative agency of a method of assessment as the standard, the Opinion disposes of the manifest discrimination arising from the huge disparity between the general level of assessment in Detroit and the level of assessment of Petitioner's property with this language: "Since the taxpayer raised no question of discrimination in regard to the mode of assessment, admitting that the reproduction cost formula was applied to assess similar properties, the remaining question is whether the Tax Commission's valuation was so unreasonable as to amount to fraud."

4. No reported Michigan case supports the doctrine presently propounded by the Court of Appeals. The power of the administrative agency to select methods of appraisal certainly has never been held in Michigan to be power to transform the administrative *method* of valuation into the legal *standard* created by the legislature under the constitutional mandate to establish a uniform rule of taxation.

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[6] See Footnote 3, Page 5, *supra*. The representation by the City Controller is supported by annual audit reports of the City Auditor General. (304a-313a)

The fact that from time to time the Michigan court has approved the use of various methods of valuation, including the reproduction cost method, does not at all mean that the court does not insist that the result of the method —the assessment—conform to the legal standard established by direction of the constitution.

Twenty-Two Charlotte, Inc. v. City of Detroit, 294 Mich. 275, 293 N.W. 647 (1940) is the definitive case on the constitutional point that the assessing officials may not depart from their bounden duty of determining market value, the legislative standard for assessment, even in the case where, as here, the property is singular in character and rarely sold. *Twenty-Two Charlotte* involved an assessment arrived at by the reproduction cost method in the depression year of 1938 against a hotel in downtown Detroit. The taxpayer, disputing the assessment on the fallacious ground that recent purchase of the hotel for a much lesser price established market value, made no attempt to establish true market value of the property or the general level of assessment in Detroit.

Twenty-Two Charlotte states:

> (p. 283) "Where property is singular in character and sales are separated by many years, there is no usual selling price in the sense the expression is used to describe the focus of buyers and sellers of commodities actively exchanged in an open market. Nor did the legislature intend that a single event be conclusive. In the valuation problem the assessing officers had to resolve in the instant case, the test of the 'usual selling price' is merely a guide for determination; *under the circumstances before us the definition provides a standard for a hypothetical or fictitious market. It was the duty of the assessors to consider the factors which motivate buyers and sellers to exchange their interests (Olson v. United States, 292 U.S. 246 [54 Sup. Ct. 704]), and to exercise their judgment in an honest effort to determine at what point the inertia to trade is overcome.*" (Emphasis supplied.)

The Court in *Twenty-Two Charlotte* sums up the constitutional necessity for substantial relation of the assessment to the legislative standard of market value in order to obtain equality in taxation, thus:

> "A generally approved practical scheme of valuation may yet produce fundamentally wrong results under the circumstances of a particular case. *Fargo v. Hart,* 193 U.S. 490 (24 Sup. Ct. 498); *Union Tank Line Co. v. Wright,* 249 U.S. 275 (39 Sup. Ct. 276); *Wallace v. Hines,* 253 U.S. 66 (40 Sup. Ct. 435); *Rowley v. Railway Co., supra* [(293 U.S. 102)]. See also, *Illinois Central R. Co. v. Minnesota,* 309 U.S. 157 (60 Sup. Ct. 419). The reproduction-cost-less-depreciation method of valuation produced a result which clearly transcended reality in the *Tunnel Case* and for this reason the tax was stricken down.
>
> 'If the result was clearly wrong, the method used would not save it.' *Bailey v. Megan,* (C.C.A. 8), 102 Fed. (2d) 651.
>
> There is no such shocking unreality in the case before us." (pp. 285, 286)

(The *Tunnel Case* referred to by the Michigan court is *City of Detroit v. Detroit & Canada Tunnel Co.,* 92 F. 2d 833, (C.C.A. 6) (1937) affirming the District Court (reported as *Parsons v. Detroit & Canada Tunnel Co.,* 15 F. Supp. 986), in invalidating assessment by the reproduction cost method for the years 1932, 1933 and 1934 for ad valorem taxes, the assessed valuation of the property being "on a level of over 400 per cent of its true cash value as arrived at by capitalizing its earning power," when property generally in Detroit, "the market value of which has been established by actual sales, is on a level of approximately 102 per cent of its actual market value." (*Parsons,* p. 994). On the point that the assessment transcended reality, the Court of Appeals observed (p. 836): "In *Adams*

Express Co. v. Ohio State Auditor, 166 U.S. 185, 222, 17 S. Ct. 604, 606, 41 L. Ed. 965, it was said: 'Business men do not pay cash for property in moonshine or dreamland. They buy and pay for that which is of value in its power to produce income, or for purposes of sale.'"

Important confirmation of the legislative intent that the integrity of the standard of cash value as free market value be preserved is obtained from the action of the state legislature immediately following decision in *Helin v. Grosse Pointe Tp.*, 329 Mich. 396, 45 N.W. 2d 338 (1951). In *Helin*, the assessment reached by the same reproduction cost method as in the case at bar was invalidated because the assessmment did not comply with the statutory standard of cash value, a prior sale of the property by the State, after it had acquired a tax title, at a much lesser sum being held controlling. Thereupon, the 1951 Michigan Legislature amended the statute to insert the following clause immediately after the words defining cash value:

> "Any sale or other disposition by the state or any agency or political subdivision thereof heretofore or hereafter made of lands acquired for delinquent taxes or any appraisal made in connection therewith shall not be considered as controlling evidence of true cash value for assessment purposes." (App. B, p. 30)

In Re Appeal of General Motors Corp., City of Livonia v. State Tax Commission, 376 Mich. 373, 137 N.W. 2d 161, (1965), reiterates that uniformity of mode of assessment does not satisfy the Michigan constitutional requirement of uniformity in taxation:

> (p. 378) "Thus all taxable property, real and personal, is placed in one category to be uniformly assessed and taxed.[1]"

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[1] *"A uniform mode of assessment does not necessarily produce a uniform result."* (Emphasis added.)

And further:

> (p. 379) "As a practical matter, unequal assessments must be reduced to the average level of assessment if the taxpayer is to have a remedy."

5. The assessments of Petitioner's property are a perfect example of enslavement of the assessing officials to an approved method of appraisal. Use of that method produced a valuation of $8,144,716 in 1960, but a valuation of $4,968,723 in 1962, a difference of over $3,000,000 in appraised value within two years time. (There was demolition of only about one-half of one per cent of the total floor space, and Petitioner had spent over $520,000 in alterations and improvements in the period between the two Commission valuations.) (See Footnote 4, page 5, *supra.*) The assessing officials had the right to use their method of appraisal. However, by the law of Michigan, the assessing officials had the bounden duty in establishing the assessment, of using their best judgment to determine market value. Judged by the constitutional standard, the assessments in all four years are so manifestly unreasonable as to clearly transcend reality.

In the final analysis, review is not sought of judgment of the assessing officials, exercised within their discretionary power. What is sought to be reviewed is the action of the assessing officials, completely outside of their discretionary powers, of usurping the constitutionally mandated power of the legislature to establish the standard for assessment in Michigan. It is particularly unfortunate that the illegal action of the assessors has been sanctioned by a court through *expressly stated* abrogation of the constitutional standard.

It is respectfully submitted that, if this Court summarily reverses the Court of Appeals or if the writ be granted so that there can be accomplished the ultimate relief of returning these assessments to the Michigan authorities for reassessment in accordance with Michigan constitutional principles, the integrity of Michigan jurisprudence will be preserved.

B. THE COURT OF APPEALS HAS DECIDED A FEDERAL QUESTION IN A WAY IN CONFLICT WITH THE APPLICABLE DECISIONS OF THIS COURT

The Michigan Constitution places all taxable property in one class for ad valorem taxation. *Appeal of General Motors Corp., supra.*

The general level of assessment of all properties in the taxing unit, the City of Detroit, has been for many years at the "rate of approximately 50% of estimated sales of cash value." Maintenance of such a low ratio of assessment of properties to market value is deliberate as a factor in assuring the "financial community" of the financial stability of the city. (A lingering mark of the great depression had been the high general ratio of assessment in Detroit to market value. Cf. *Parsons, supra; Sloman-Polk Co. v. Detroit,* 261 Mich. 689, 247 N.W. 95 (1933).) On the other hand, Petitioner's property has been assessed for four years at many times its market value, in deliberate avoidance of the standard for assessment mandated by the Michigan constitution. It is submitted that this constitutes intentional, persistent and systematic discrimination in violation of the Fourteenth Amendment of the Constitution of the United States.

"It has long been recognized that discrimination between taxpayers, if intentional or so persistent as to be systematic, is a denial of equal protection, whether the discrimination is in the application of different rates to property in the same class or in inequality in its valuation." *Great Northern Ry. Co. v. Weeks,* 297 U.S. 135, 155, Cf. *Iowa-Des Moines Nat. Bank v. Bennett,* 284 U.S. 239, 245; *Cumberland Coal Co. v. Board of Revision,* 284 U.S. 23, 25ff; *Chicago G. W. R. Co. v. Kendall,* 266 U.S. 94, 98, 99; *Sioux City Bridge Co. v. Dakota County,* 260 U.S. 441, 445; *Raymond v. Chicago Union Traction Co.,* 207 U.S. 20, 37.

CONCLUSION

The clear error of law in this case is so fundamental, and its probable effect on Michigan jurisprudence so devastating, that summary reversal by this Court is appropriate.

Respectfully submitted,

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APPENDIX A

No. 16956

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Harry B. Helmsley,
Plaintiff-Appellant,
v.
City of Detroit, Charles N. Williams, County of Wayne and Louis H. Funk,
Defendants-Appellees.

Appeal from the United State District Court for the Eastern District of Michigan, Southern Division.

OPINIONS OF THE COURT OF APPEALS FOR THE SIXTH CIRCUIT

Decided June 29, 1967

Before: Weick, Chief Judge, Celebrezze, Circuit Judge, and Neese, District Judge.*

WEICK, Chief Judge. Plaintiff appeals from the District Court's judgment of no cause of action after the trial of four consolidated suits for recovery of real property taxes paid under protest to the City of Detroit, Michigan, and to the County of Wayne.

* Honorable C. G. Neese, Judge, United States District Court for the Eastern District of Tennessee, sitting by designation.

The dispute revolves around the alleged illegal assessment of ad valorem taxes on real property owned by the plaintiff in Detroit during the years 1960 through 1963. An earlier suit for declaratory judgment in the Federal Courts was dismissed under the authority of the Johnson Act, 28 U.S.C. §1341 (1962) because of the availability of an adequate state remedy. *Helmsley* v. *City of Detroit*, 320 F.2d 476 (6th Cir. 1963). Plaintiff has since paid the taxes under protest, and the Federal Courts may now entertain his action for refund under the diversity jurisdiction since he is a citizen of New York.[1]

The property subject to the disputed tax was originally constructed as a heavy industry plant, consisting of several buildings with a total floor area exceeding 2,000,000 square feet. Most of the buildings were built before 1929 and were used for the production of automobile bodies until 1954. From that time on, the Murray Corporation, the previous owner, discontinued manufacturing operations and attempted to sell the plant, meanwhile using the buildings for its own warehousing and also as commercial rental property which it leased to various tenants.

On January 12, 1960, plaintiff purchased the plant from Murray Corporation for $500,000, and devoted it to use as income property subdivided for light manufacturing and warehousing. During the period when the disputed taxes were assessed, the property was never fully rented and plaintiff sustained large operating losses.

In 1960, following an appeal from the assessment levied by the Detroit Board of Assessors, the State Tax Commission of Michigan fixed the valuation of plaintiff's Detroit property at $3,532,350. This figure was the result of the

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[1] In his pleadings, plaintiff vaguely alleged a federal question under the Constitution, but this was never pursued in the arguments either at the trial level or on appeal here.

application of a formula based on the reproduction cost of the buildings with allowances for depreciation, obsolescence and rental vacancies. This same assessment was carried forward for the year 1961.

However, in 1962, following a similar appeal from the Board of Assessors' determination, the State Tax Commission reduced the valuation to $2,427,710. That figure was continued for 1963 as well. (It should be noted, however, that because the general "equalized" level of assessments in Michigan is 50% of "cash value", these figures represent only about one-half of the actual values as found by the Tax Commission.)

The Michigan Constitution of 1908, which was still in force at the times relevant herein, prescribed that ad valorem property taxes must be uniform and at cash value. Mich. Const. Art. X, §§3, 7 (1908). The present Constitution provides for a similar rule of assessment; see Mich. Const. Art. IX, §3 (1963). The Michigan Legislature has defined "cash value" in essentially the same language since 1882:

> "The words 'cash value', whenever used in this act, shall be held to mean the usual selling price at the place where the property to which the term is applied shall be at the time of assessment, being the price which could be obtained therefor at private sale, not at forced or auction sale." Comp. Laws 1948 §211.27; M.S.A. §7.27.

It is plaintiff's contention that the statutory language compels the assessing officials to utilize the "market" approach to valuation, rather than the modified reproduction cost method which has been applied. He does not argue that he has been subjected to a different method than that used in other assessments in Detroit, but insists that his assessment is many times in excess of the cash value of the property and that it transgresses reasonable limits.

While the terms of the statute might well be interpreted as plaintiff urges if we were free to treat the question afresh, it is a first principle in cases such as this that the Federal Courts are bound by the law of Michigan and the decisions of its courts construing it. That rule preceded the decision in *Erie R.R. Co. v. Tompkins,* 304 U.S. 64 (1938), since it has never been seriously questioned that the decisions of State Courts on matters of state statutory interpretation and local tax matters must guide the federal judiciary. *Swift v. Tyson,* 41 U.S. (16 Pet.) 1, 18 (1942); *Dawson v. Kentucky Distillers Co.,* 255 U.S. 288, 292 (1921). Thus we must turn to the Michigan cases to determine the legislative requirements concerning the measurement of "cash value."

In *Cleveland-Cliffs Iron Co. v. Township of Republic,* 196 Mich. 189 (1917), the Michigan Supreme Court established its fundamental approach to the valuation law, stating:

> "The legislative statement of the meaning of cash value, which is really a statement of tests to be applied in determining cash value, is not exclusive or inclusive." (196 Mich. at 201)

This interpretation has been the touchstone of review in cases where determination of "the usual selling price" is not practicable because the property is rarely or never sold and no market exists for it. In the *Cleveland-Cliffs* case the Court had first noted:

> "'The usual selling price' at the place where the property is when assessed is manifestly no guide to an assessor in a case where the property is singular in character and is never sold or sold once in a decade." (196 Mich. at 200)

Applying these basic principles, the Michigan Courts have long endorsed the use of an adjusted reproduction cost formula in the assessment of properties which have an inadequate or distorted market. Where property is singular in character and sales are infrequent, the reproduction cost method is approved so long as the result is fair and discrimination is absent. *Twenty-Two Charlotte, Inc. v. City of Detroit,* 294 Mich. 275, 283, 285 (1940); *Moran v. Grosse Pointe Twp.,* 317 Mich. 248 (1947).

In a case involving an industrial plant similar to plaintiff's in almost all respects, the Michigan Court upheld the Tax Commission's use of reproduction cost despite an assessment of almost twice that amount urged by the taxpayer derived from other methods of calculation. *Kingsford Chem. Co. v. City of Kingsford,* 347 Mich. 91 (1956).

In one of the few cases where a reproduction cost determination was upset by the Courts, *Helin v. Grosse Pointe Twp.,* 329 Mich. 396 (1951), the crucial factor was the Court's decision that a prior sale of the property by the state after it had acquired a tax title, was binding on the assessing authorities as to cash value.

That unusual circumstance has not intervened in the present case. Further, it is important to note that the rule in *Helin* was immediately changed by the legislature by amending the definition of cash value. This action was an important confirmation of the course which the Michigan Courts had followed in interpreting the statute in cases involving property with a sparse sales history.

In the absence of fraud or discrimination, the actions of the State Tax Commission are final and the courts will not dispute its judgment. *Naph-Sol Ref. Co. v. Township of Muskegon,* 346 Mich. 16 (1956); *Moran v. Grosse Pointe Twp., supra; S. S. Kresge Co. v. City of Detroit,* 276 Mich.

565 (1936). Necessarily the discretionary power of the Commission extends to a reasonable choice of methodology, especially in such a judgmental science as real estate valuation. See *Pantlind Hotel Co. v. Michigan State Tax Comm'n,* 3 Mich. App. 170, 141 N.W.2d 699, 701 (1966).

Since the taxpayer raised no question of discrimination in regard to the mode of assessment, admitting that the reproduction cost formula was applied to assess similar properties, the remaining question is whether the Tax Commission's valuation was so unreasonable as to amount to fraud. It is not enough that a mere overvaluation or error of judgment was committed; *Naph-Sol Ref. Co. v. Township of Muskegon, supra.*

On this question the District Judge heard the testimony of plaintiff's real estate experts who based their valuations entirely on the market approach, while defendants' experts valued the property on the reproduction cost method.

The Court found that the property was singular in character and that the best and most efficient use of it was not being made, that the sale of the property to plaintiff was the only sale of it in forty years, and was made only "after continued efforts to sell and sell quickly"; and that under the circumstances of the case the market approach would not result in the ascertainment of the true value of the property.

The Court further found that the reproduction cost method of valuation offered a realistic standard to the assessors in arriving at an assessment value, and that the standard so used was not arbitrary, unreasonable or fraudulent.

Further, a review of the record indicates that plaintiff's primary objection was to the use of the reproduction method, and that none of his evidence offered in the District Court was aimed at showing a misuse or abuse of its principles. Indeed, plaintiff offered no evidence on reproduction cost valuation and did not even cross-examine any of the defendants' expert witnesses. The dissent, while agreeing that plaintiff was wrong in attacking the principle of reproduction cost valuation, likewise does not point out a single error in its application to the property in question.

In the absence of any evidence that the State Tax Commission had committed errors in its use of the reproduction cost valuation, or had discriminated against the plaintiff, we cannot say that the District Judge was wrong in accepting the valuations of defendants' experts and rejecting those of plaintiff's experts. Our review of the record convinces us that there was substantial evidence to support the findings of fact of the District Judge and they are not clearly erroneous. Fed. R. Civ. P. 52(a).

Thus we have here a presumption in favor of the validity of the assessment aided by findings of fact of the District Judge adopted in a de novo hearing[2] and upon consideration of all the evidence.

Once it is established that the State Tax Commission had the right to choose the reproduction cost method, most of plaintiff's case simply missed the mark. Moreover, the use

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[2] It is important to point out that the proceeding in the District Court was actually the second de novo hearing in this case. Under Michigan law, plaintiff was afforded a full evidentiary hearing before the State Tax Commission upon appeal from the findings of the Local Board of Assessors. While the Tax Commission made some changes in the initial assessment, it was in fundamental agreement concerning the issues in dispute here.

of a significant adjustment for economic obsolescence did much to bridge any theoretical gap between the market approach and the reconstruction method. The increase in this obsolescence factor from 45% in 1960 to 65% in 1962 was apparently responsible for most of the decrease in valuation upon which the dissent lays so much emphasis. Far from being an admission of past errors in the overall valuation, as the dissent implies, this change was the continuation of an increasing trend in regard to this property which dated back at least to 1954 when only a 10% factor was used. (In addition, it should be pointed out that the decrease in the 1962 valuation was inevitably affected by the demolition of two buildings on the property after the 1960-61 valuation.)

While there may exist a genuine, even intense difference of opinion between the parties as to the value of the property for tax purposes, it is not the role of the courts to set aside the good faith, reasoned judgment of the state taxing authorities in any but the most obvious cases of error. This is not the situation in the present case, considering the tax law in the light of the state decisions.

The burden of proof to establish fraud on the part of the State Tax Commission was upon the plaintiff. The District Court, in considering the evidence, found that no fraud had been proven. We are of the opinion that this finding was correct.

Affirmed.

DISSENTING OPINION

NEESE, District Judge (dissenting). The profound deference I hold for the more experienced judgments of my learned brethren must not dissuade me from the performance of my sworn duty in dissenting respectfully from the conclusion reached by the majority herein. I cannot avoid the conclusion that the valuation on which the assessments of the plaintiff's property were based in 1960, 1961, 1962 and 1963 were so palpably unfair and wrong as to amount, in legal effect, to the equivalent of the intention or fraudulent purpose on the part of the defendants to overvalue this plaintiff's property and set at naught fundamental principles which safeguard the rights of a taxpayer and his property. *Cf. Rowley v. Chicago, N. W. R. Co.*, 293 U. S. 102, 109-111 (1934); *Great Northern R. Co. v. Weeks*, 297 U. S. 135, 139 (1936).

The cold figures suggest to me that the taxing authorities themselves recognized eventually that the valuations at issue were unfair and clearly wrong. The various assessments set forth in the majority opinion reflect an adjustment on appeal to the State Tax Commission of Michigan of more than 31% between the valuations for the tax years 1961 and 1962. This represents a startling commentary on the overvaluation before adjustment on appeal. The final valuation for the tax year 1964[1] amounted to only 45.6% of the initial valuation of this taxpayer's property, and the 1964 valuation was computed after the plaintiff had expended approximately $125,000 in enhancing its value with improvements. These considerations persuade me that the valuations prior to 1964 under "• • • a generally approved practical scheme of valuation [produced] fundamentally wrong results under the circumstances • • •" of this particular case. See *Twenty-Two Charlotte, Inc. v. City of Detroit*, 294 Mich. 275, 285 (1940).

[1] The 1964 valuation for this property was stated in oral argument before us without dispute to have been $1,610,200.

While agreeing totally with the majority that Michigan law is applicable here, and that the employment by these taxing authorities of the reproduction-cost-less-depreciation-and-obsolescence method of valuation was not improper and was uniformly applied, this is not determinative. While "* * * [a] tax must be uniform to be good, [i]t it not good simply because it is uniform * * *", *In re Harleigh,* 299 Penna. 385, 149 A. 653, 655, and "* * * [i]f the result was clearly wrong, the method used [will] not save it. * * *" *Twenty-Two Charlotte, Inc. v. City of Detroit, supra,* 249 Mich. at 286, quoting from *Bailey v. Megan,* 102 F.2d 651, 654[4] (C.C.A. 8, 1939).

I am in agreement further with the majority that, in the absence of fraud or discrimination, the actions of the State Tax Commission of Michigan are final and not to be disputed as to the exercise of judgment by the courts. (See cases cited in the majority opinion.) There is present here an overriding consideration, however.

We are adjured from on high to assume more responsibility for the reasonableness and fairness of such administrative decisions than some courts had assumed before 1951, to be influenced by the feeling that courts are not to abdicate their conventional judicial functions, and to discharge the responsibility imposed upon us by the Congress to keep such matters within reasonable bounds of reality. See *Universal Camera Corp. v. National L. R. Board,* 340 U. S. 474, 488 (headnote 8) (1951). According the Michigan taxing authorities' judgments due consideration, where, as here, the record demonstrates a reduction in valuation of realty of $1,922,150, roughly 55%, over a span of five tax years, when one-eighth of a million dollars in improvements have been added to the realty within that period, in my mind it is an abdication of our conventional judicial functions not to conclude that the earlier higher valuations must have been "clearly wrong".

As indicated, *supra*, the action of the defendants which I fault pertains to the result reached. This result passes muster on Michigan's qualification that discrimination be absent, while failing to pass muster on the further qualification that the result also be fair. *Twenty-Two Charlotte, Inc. v. City of Detroit, supra.*

Entertaining this view of the matters at issue, I would reverse and remand, with no prejudice to a proper reassessment for the periods in issue, *Helin v. Grosse Pointe Township*, 329 Mich. 396, 408 (1951), on pain of future judgment by this Court for a full refund of the taxes paid under protest by the plaintiff.[2]

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[2] I think this may be preferable to ordering a refund of the entire amount of the disputed taxes, when the plaintiff must then pay back a substantial proportion thereof following reassessment.

No. 16,956

UNITED STATES COURT OF APPEALS
for the Sixth Circuit

Harry B. Helmsley,
Plaintiff-Appellant,
v.
City of Detroit and Charles N. Williams and County of Wayne and Louis H. Funk,
Defendants-Appellees.

Before: Weick, Chief Judge, Celebrezze, Circuit Judge and Neese, District Judge.

JUDGMENT

Appeal from the United States District Court for the Eastern District of Michigan.

THIS CAUSE came on to be heard on the record from the United States District Court for the Eastern District of Michigan and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

It is further ordered that Defendants-Appellees recover from Plaintiff-Appellant the costs on appeal, as itemized below, and that execution therefor issue out of said District Court.

Entered by order of the Court.

APPENDIX B

CONSTITUTION OF THE UNITED STATES

Section 1, Fourteenth Amendment:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

MICHIGAN CONSTITUTION OF 1908

Article X, Section 3:

"The legislature shall provide by law a uniform rule of taxation, except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law: Provided, That the legislature shall provide by law a uniform rule of taxation for such property as shall be assessed by the state board of assessors, and the rate of taxation on such property shall be the rate which the state board of assessors shall ascertain and determine is the average rate levied upon other property upon which ad valorem taxes are assessed for state, county, township, school and municipal purposes."

Article X, Section 7:

"All assessments hereafter authorized shall be on property at its cash value.

MICHIGAN STATUTES

Compiled Laws 1948, Section 211.27:

M.S.A., Section 7.27:

"The words 'cash value,' whenever used in this act, shall be held to mean the usual selling price at the place where the property to which the term is applied shall be at the time of assessment, being the price which could be obtained therefor at private sale, and not at forced or auction sale. Any sale or other disposition by the state or any agency or political subdivision thereof heretofore or hereafter made of lands acquired for delinquent taxes or any appraisal made in connection therewith shall not be considered as controlling evidence of true cash value for assessment purposes. In determining the value the assessor shall also consider the advantages and disadvantages of location, quality of soil, quantity and value of standing timber, water power and privileges, mines, minerals, quarries or other valuable deposits known to be available therein and their value."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 646

HARRY B. HELMSLEY,
Petitioner

v.

CITY OF DETROIT and CHARLES N. WILLIAMS;
and
COUNTY OF WAYNE and LOUIS H. FUNK,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS, SIXTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

(Figures in parentheses followed by letter (a) refer to pages of Appendix filed below unless otherwise indicated.)

OPINIONS BELOW

The opinions of the United States Court of Appeals for the Sixth Circuit entered on June 29, 1967 are reported in 380 F(2d) 169.

JURISDICTION

The statutory jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Respondents cannot accept the recitation of Question Presented on p. 3 of the Petition nor the premise on which it is submitted for the following reasons.

First, Petitioner presumes that market value is the sole criterion. It has arrived at this, by misstating the statutory definition of cash value which in Michigan highlights "usual selling price." (Appendix B, p. 30 of Petition.)

Second, said question is not the one considered and disposed of by the majority opinion of the court below.

(a) The question framed by the court below was whether petitioner had proved in the trial court that the State Tax Commission committed fraud, or was guilty of discrimination, in its determinations of the assessments complained of (Appendix A, p. 21-22).

(b) As for the suggestion of violation of the equal protection clause of the Fourteenth Amendment, this was not pressed by petitioner below and was not reached by the court. It was accordingly disposed of by a footnote in the majority opinion (Appendix A, p. 18).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional and applicable statutory provisions appearing in the Petition (Appendix B) will not be duplicated herein.

However, Respondents submit to the Court, as an additional reference in Appendix to this brief, Section 152 of the General Property Tax Act of Michigan (Act 206, Public Acts of Michigan of 1893, Compiled Laws of Michigan 1948, Sections 211.1 et seq., as amended), C.L. Mich. 1948, Sec. 211.152 (M.S.A. 7.210).

COUNTERSTATEMENT

Petitioner commenced four actions against the City and County to recover taxes paid under protest based on assessments against his real property in Detroit, County of Wayne, for the years 1960 through 1963. These actions followed disposition of the earlier declaratory judgment case of *Helmsley v. Detroit,* 320 F.2d 476 (1963) (C.C.A. 6), which had been brought by Petitioner challenging the propriety of the assessments before payment of these taxes.

The Court of Appeals there reviewed Petitioner's allegations and the Michigan authorities to determine whether there was a state remedy within the established construction of the Johnson Act (28 U.S.C.A. Sec. 1341) and held that there was. The opinion of said Court also concluded on the basis of Petitioner's allegations (p. 480) that "the objections which the Plaintiff makes to the assessment of the property in the case before us, if proven, would come within the definition of fraud as given in these cases."

The first assessment was challenged at the administrative level by Petitioner in 1960. As a result of his appeal from an assessment by the Detroit Board of Assessors, the Michigan State Tax Commission fixed the assessment at $3,532,350 (274a). This figure was the result of application of a formula using as a start the basic approach of reproduction costs of the buildings with allowances for depreciation, obsolescence, and other factors (211a). This same assessment was carried forward for 1961 and 1962.

However, in 1962, following a similar appeal from the Board of Assessor's adoption of said figure, the State Tax Commission reduced the assessment to $2,427,710 (275a). The latter figure was also continued for 1963 without any challenge at the administrative level.

When the present actions came up for hearing on the merits, a five-day trial was held. Petitioner's witnesses consisted of an employee who was in charge of the subject property together with several expert witnesses. Three of the latter were real estate men who offered testimony based solely on the market approach that Petitioner's property herein had a market value ranging from $250,000 to $500,000 for the four years, with one of said witnesses admitting an estimate of $600,000 for 1962 and $750,000 for 1963.

Respondents' witnesses consisted of a member of the Detroit Board of Assessors and three staff employees followed by four employees of the Michigan State Tax Commission. Each testified regarding his part in the examination and valuation of this real property primarily by the reproduction cost approach as was uniformly done on all other similar property (213a, 232a) for the years in question. Other witnesses called by Respondents were the former Detroit City Controller and Petitioner's General Manager who was previously the assistant manager of said property.

With the exception of Mr. Cornell, one of the staff employees of the Michigan State Tax Commission, none of Respondents' expert witnesses were cross-examined by counsel for Petitioner.

After hearing testimony, final motions, oral arguments and considering briefs submitted by counsel for the respective parties, the trial judge issued his Findings of Fact and Conclusions of Law (327a). On the basis of his determination, judgments of no cause for action were entered in favor of Respondents on June 28, 1965.

These judgments were affirmed by the Court of Appeals for the Sixth Circuit with Judge Neese dissenting, by opinions issued June 29, 1967, (Appendix A, p. 17).

ARGUMENT

A. NO FEDERAL QUESTION UNDER THE CONSTITUTION

The foregoing statement makes clear that the decisions below were premised on the holdings that Petitioner had not proven any fraud in arriving at the several assessments by the State Tax Commission. Neither the trial court nor the Court of Appeals reached the Federal Constitutional question suggested in the Petition (p. 6) for the reason footnoted by the court below in its opinion (Appendix A, p. 18):

> "In his pleadings plaintiff vaguely alleged a federal question under the Constitution, but this was never pursued in the arguments either at the trial level or on appeal here."

Moreover, any claim of denial of equal protection of the laws is eradicated by absence of any offer of proofs to indicate discrimination in the mode of assessment of Petitioner's real property. Petitioner's counsel admitted that the reproduction cost formula used in assessments by the State Tax Commission with respect to this property was applied to similar properties but claimed that this made no difference.

In view of such lack of discrimination, there is no valid basis for consideration of the decisions by this Court, cited in the Petition at p. 15.

The remaining question was simply as stated by the opinion of the Court of Appeals (Appendix A, p. 22):

> ". . . whether the Tax Commission's valuation was so unreasonable as to amount to fraud."

Reviewing the record made in the trial court, in the light of established construction of the Michigon Constitution and applicable statutes, the majority opinion of the Court of Appeals correctly held (Appendix A, p. 24):

> "The burden of proof to establish fraud on the part of the State Tax Commission was upon the plaintiff. The District Court in considering the evidence, found that no fraud had been proven. We are of the opinion that this finding was correct."

It should be noted that the dissenting opinion below agreed totally with the majority (Appendix A, p. 26).

> ". . . that Michigan law is applicable here, and that the employment by these taxing authorities of the reproduction-cost-less-depreciation-and-obsolescence method of valuation was not improper and was uniformly applied, . . ."

Further on, it stated:

> "I am in agreement further with the majority that, in the absence of fraud or discrimination, the actions of the State Tax Commission of Michigan are final and not to be disputed as to the exercise of judgment by the courts . . ."

The dissent appears to be based primarily on the assumption that the several reductions over a span of five tax years indicate that the earlier higher valuations must have been clearly wrong. It points to one-eighth of a million dollars in improvements added within that period. This was refuted by the majority opinion however (Appendix A, p. 24) which noted continuation of an increasing trend in regard to this property which dated back at least to 1954 when only a 10 per cent (obsolescence) factor was used. It concluded with the following (p. 24):

> "(In addition, it should be pointed out that the decrease in the 1962 valuation was inevitably affected by the demolition of two buildings on the property after the 1960-61 valuation)."

B. THE DECISION OF THE COURT OF APPEALS IS CLEARLY CORRECT

The tax system created by the General Property Tax Act of Michigan, *supra,* is a complete and unified system which applies equally to all municipalities and to all taxpayers on a statewide basis. At the highest level is the State Tax Commission with authority to review assessments which have been appealed to it.

Not only was Petitioner's property valued at lower figures by staff appraisers of the Commission than by Detroit's Board of Assessors, but further factors were applied to arrive at assessments at a state equalized level.

In 1960, the staff appraiser's report to the State Tax Commission, which was Respondents' Exhibit 25 (314a), indicated that in addition to a 50 per cent factor, an average unit ratio of 87.05 was applied to the valuation to produce the reduced assessment.

In 1962, a statement by still another appraiser, which was Respondents' Exhibits 34 and 34a (320a, 325a), shows similar application of a 50 per cent State Equalized Level factor and a further factor of 85.51 per cent of State Equalized Value to assessment.

It follows that Petitioner was duly granted the benefit of equalization not only with other taxpayers in Detroit but on a statewide basis as well. Any complaint that this property was discriminated against is refuted by the record.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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Dated: October 23, 1967.

APPENDIX

Section 152 of the General Property Tax Act of Michigan (Act 206, Public Acts of Michigan of 1893, Compiled Laws of Michigan 1948, Sections 211.1 et seq., as amended) C.L. Mich. 1948, Sec. 211.152 (M.S.A. 7.210).

> "After the various assessment rolls required to be made under this act or under the provisions of any municipal charter shall have been passed upon by the several boards of review, and prior to the making and delivery of the tax rolls to the proper officer for collection of taxes, and in no case later than the first Monday in May, the several assessment rolls shall be subject to inspection by the state tax commission or by any member or duly authorized representative thereof . . . The action of said commission or member done as provided in this act shall be final. When the assessment of any property has been reviewed by said commission as herein authorized, such assessment shall not be changed for a period of 3 years without the written consent of said commission."

SUPREME COURT, U. S.

FILED
NOV 8 1967
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 646

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ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

REPLY FOR PETITIONER

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IN THE

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ON PETITION FOR A WRIT OF CERTIORARI TO THE
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REPLY FOR PETITIONER

I.

THE FEDERAL QUESTION

A. Respondents make the untenable assertion in their Brief in Opposition that there is no federal question here; that it was disposed of by a footnoted comment in the

Opinion of the Court of Appeals that a federal question under the Constitution was "vaguely alleged" by Petitioner in his pleadings, and was "never pursued." We are constrained to state, with full respect for the Court of Appeals, that said comment is without foundation and was absolutely unwarranted, if only for the following reasons:

1. Paragraph 1 of the Complaint in each of the four consolidated cases at bar alleges:

> "This court also has jurisdiction because this action arises under the Fourteenth Amendment to the Constitution of the United States as hereinafter more fully appears." (6a, 22a, 43a, 63a.)

Paragraph 9 of each Complaint alleges:

> "At the same time the assessors have been wilfully and deliberately over-assessing the property of Plaintiff in an amount substantially exceeding 7 times its true cash value, the assessors have been deliberately and wilfully assessing most of the real and personal property in the City of Detroit substantially under cash or market value . . . Said assessment . . . wilfully discriminating against Plaintiff and his property, is fraudulent, amounts to arbitrary taking of Plaintiff's property without compensation, deprives Plaintiff of his property without due process of law, denies to Plaintiff equal protection of the laws, and is in violation of the due process clause, being Sec. 1 of the Fourteenth Amendment to the Constitution of the United States." (11a-12a, 27a-29a, 48a-50a, 68a-69a.)

2. Petitioner proved these allegations at the trial, putting in evidence the market value of his own property, and establishing the inequality of property valuation by putting into evidence over the objections of Respondents (114a-115a, 176a, 177a) the representation and admissions of the City Officials that the general level of Detroit assess-

ment is set at approximately 50 per cent of market value. (Exhibit 11, 291a-293a), (Exhibits 19-22a, 304a-313a).

3. The conclusion of Petitioner's main brief in the Court of Appeals, reiterating his argument to the District Court, sums up the constitutional point thus: "The undisputed facts, on the record here, are that, as compared to the general level of assessment in the City of Detroit, plaintiff's property has been over assessed by at least 1500% in 1960 and 1961, and by at least 670% in 1962 and 1963.

This, we submit, constitutes constructive fraud, discrimination and confiscation."

B. In their Brief In Opposition, respondents fail to recognize the fundamental verity that uniformity of method of assessment is by no means assurance of equality of valuation. Where a particular property is assessed at many times market value, but the general level of assessment is much less than market value, inequality of valuation obviously exists. Inequality of valuation is discrimination in violation of the equal protection clause of the Fourteenth Amendment under the long standing doctrine of this Court stated in the Petition at pages 14-15.

II.

ABDICATION OF THE JUDICIAL FUNCTION

Petitioner does not attack the Michigan system of property tax assessment. Nor does he deny the authority of the administrative officials to use any method of valuation they choose.

However, Petitioner does contend, as does the Dissent below, that it is the function of the Court, under Michigan law, to determine whether the result of the method of valuation—the particular assessment—is fair. And we claim it

to be basic that, in discharging its judicial obligation, the Court had the duty of determining the fairness of the result of the valuation method by means of application of a legal standard.

The Michigan legislature, by mandate of the Constitution, has established that standard for the measurement of the fairness of individual assessments. The majority opinion below expressly discards that legal standard, holding that, since the administrative method of valuation is an approved method, it serves as the standard for measuring its own product—the assessment. This error, we submit, constitutes relinquishment of a vital judicial power and function, which if not reversed, will result in the gravest consequences to fundamental constitutional rights of all property taxpayers.

Respectfully submitted,

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